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August 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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BY HAND DELIVERY

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

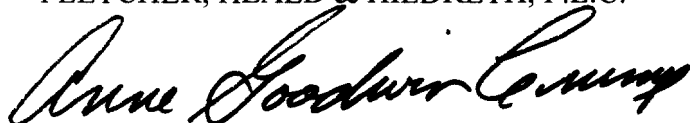
Re: MM Docket No. 92-214
Columbia, Bourbon, Leasburg,
Gerald, Dixon, and Cuba, Missouri

Dear Ms. Salas:

Transmitted herewith, on behalf of Zimmer Radio of Mid-Missouri, Inc., are an original and four copies of its "Response to Motion to Strike" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Zimmer Radio of Mid-Missouri, Inc.

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 92-214
Table of Allotments,)	RM-8061
FM Broadcast Stations.)	RM-8144
(Columbia, Bourbon, Leasburg,)	RM-8145
Gerald, Dixon and Cuba, Missouri))	RM-8146
)	RM-8147

Directed to: Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

RESPONSE TO MOTION TO STRIKE

Zimmer Radio of Mid-Missouri, Inc. ("Zimmer"), by its counsel, hereby respectfully submits its Response to the "Motion to Strike Opposition to Petition for Reconsideration or, Alternatively, Reply to Opposition" submitted by Lake Broadcasting, Inc. ("Lake") in the above-captioned proceeding on July 18, 2001. With respect thereto, the following is stated:

1. Lake has moved to strike Zimmer's "Opposition to Petition for Reconsideration" on the grounds that the Opposition allegedly was not received by the Commission on July 3, 2001, but rather was not actually received until Zimmer resubmitted the pleading on July 11, 2001. As has been previously stated with the resubmission, counsel for Zimmer prepared for filing both an Opposition to Petition for Reconsideration on behalf of Zimmer in this proceeding and an Opposition to Petition for Reconsideration on behalf W.R.D. Entertainment, Inc. ("W.R.D.") in related MM Docket No. 91-352. Counsel for Zimmer recalls reviewing and executing the originals of both documents, as well as the transmittal letters for both documents.

It appears, however, that when the copies of the Zimmer Opposition were made for the Service List and for submission to the Commission, the text of the W.R.D. Opposition was inadvertently inserted between the transmittal letter on behalf of Zimmer in this docket and the certificate of service which showed that copies were served on the parties to the instant proceeding.

2. Lake has attempted to make much of the fact that Zimmer does not have a date-stamped copy of its Opposition from July 3, 2001. It should be kept in mind that, while such a copy would be helpful, there is no requirement that parties to proceedings obtain and retain a date-stamped copy of any pleading. When the original of the Zimmer Opposition was last in the control of counsel for Zimmer, the Opposition was in order and was with the appropriate transmittal letter. It appears that the secretary responsible for making the copies of the Zimmer Opposition, as well as the copies for the W.R.D. Opposition, became confused and made copies of only the W.R.D. Opposition and placed those with both the Zimmer transmittal letter and the W.R.D. transmittal letter. The employment of that secretary with this firm has now been terminated. While counsel for Zimmer cannot be completely certain what happened to the original of the Zimmer Opposition, the logical conclusion, given the fact that the original is no longer in this office, is that it was, in fact, sent to the Commission but may have become confused with other documents or otherwise misplaced.

3. Even assuming, *arguendo*, that the original of the Zimmer Opposition mysteriously vanished and never reached the Commission, the fact remains that a pleading was filed in this docket with the Zimmer transmittal letter on July 3, 2001. While the body of that pleading mistakenly was identical to that filed in related MM Docket No. 91-352, counsel for Zimmer has in its possession two, separate date-stamped copies of the pleading bearing the date

of July 3, 2001, and the Commission's Electronic Comment Filing System (ECFS) shows that the pleading was filed in the instant docket on July 3, 2001.

4. Furthermore, the fundamental arguments raised in the pleading – namely, that Lake has no continuing authorizations to modify, and that anyone acquiring a license for the former Lake facilities will be acquiring a new license, not an assigned one – were precisely the same as those raised in the Zimmer Opposition. Thus, regardless of whether the original of the Zimmer Opposition was received on July 3, it is uncontroverted that a pleading containing identical arguments was timely submitted in this docket on that date. Accordingly, Lake could not have been prejudiced. Lake was aware of the points made against it from the pleadings which were served on it on July 3, and the identity of the second filer could have been deduced from both the transmittal letter (a copy of which also was in ECFS), and the listing on the certificate of service. Furthermore, Lake has acknowledged that it received a correct copy of the resubmitted Zimmer Opposition a full week before its Reply was due to be filed. When counsel for Lake advised counsel for Zimmer of the error in the service copy of Zimmer's Opposition, counsel for Zimmer consented to any extension of time counsel for Lake required to prepare and file Lake's Reply. Moreover, at that point, Lake was already preparing a Reply to the identical arguments as raised in the W.R.D. Opposition, and little, if any, additional work was required on its part to prepare a Reply to the Zimmer Opposition. Indeed, a comparison of the Reply filed by Lake in this docket with that filed in MM Docket No. 91-352 shows that, aside from the Motion to Strike added in this docket, they are essentially identical.

5. Moreover, it must be remembered that the Commission decisions in question in both the instant docket and MM Docket No. 91-352 arise from the same set of facts. The

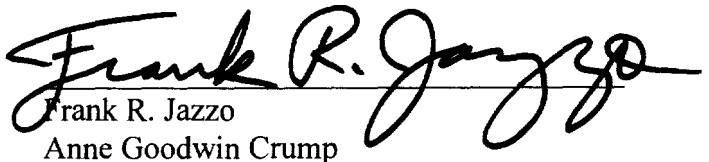
Commission, therefore, is necessarily constrained to treat these dockets together, and the outcome in one docket cannot be different from the outcome in the other related dockets. Consequently, even if Zimmer had never filed anything at all in this docket, the arguments raised in its pleading nonetheless would have been required to be considered in conjunction with this docket due to their inclusion in an Opposition filed in a related docket. Thus, Lake can suffer no harm from having the Zimmer Opposition accepted and considered, since the arguments raised therein would have had to be considered in connection with the instant docket in any event. Given the circumstances set forth herein, and to the extent deemed necessary, Zimmer respectfully requests that its Opposition be accepted and considered.

WHEREFORE, the premises considered, Zimmer respectfully submits that the Lake Motion to Strike should be denied.

Respectfully submitted,

ZIMMER RADIO OF MID-MISSOURI, INC.

By:


Frank R. Jazzo
Anne Goodwin Crump

Its Attorneys

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1300 North 17th Street
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Arlington, Virginia 22209
(703) 812-0400

August 1, 2001

agc#144oppmotstrik.zim

DECLARATION

I, Anne Goodwin Crump, hereby declare and state as follows:

I am an attorney with the law firm of Fletcher, Heald & Hildreth, P.L.C. I was responsible for the initial drafting of the Opposition to Petition for Reconsideration to be filed for Zimmer Radio of Mid-Missouri, Inc. ("Zimmer") in MM Docket No. 92-214 and the Opposition to Petition for Reconsideration to be filed by W.R.D. Entertainment, Inc. ("W.R.D.") in MM Docket No. 91-352. On July 3, 2001, after receiving and incorporating comments from Frank R. Jazzo, also of Fletcher, Heald & Hildreth, P.L.C., I finalized the two pleadings and saved them on my computer's hard drive. I likewise drafted and saved transmittal letters for the two pleadings on my computer's hard drive. I then also copied all four electronic files to a diskette and gave them to my then-secretary for printing.

After the documents were printed, my secretary brought them to me for my review and signature. Since the two pleadings looked so much alike, I specifically remember checking the first pages and the signature pages to make sure that the correct pleading was with the correct transmittal letter. I recall signing two different pleadings, and my best recollection is that the name Zimmer was on one of the pages that I signed. After the pleadings were executed, I gave them to my secretary for copying, final preparation for delivery to the Commission, and mailing to the persons indicated on each certificate of service. The last time that I saw the documents before they were filed, both the Zimmer and the W.R.D. Oppositions appeared to be in order and together with the correct transmittal letters and certificates of service. This process was completed by approximately 4:00 p.m. on July 3, 2001.

After that time, I do not know what ultimately happened to the Zimmer Opposition. I had

no reason, however, to believe that it would not be filed with the Commission in the ordinary course, as at least the W.R.D. Opposition was in fact filed. While I was out of the office on vacation the following week, I learned that an apparent problem had arisen with the copying of the Zimmer Opposition, and that Mr. Jazzo had resubmitted that pleading. Upon reviewing the files after my return, I found that there were actually two copies of the W.R.D. Opposition, each with a separate and individual date-stamp from the Commission, one filed with the Zimmer transmittal letter and one filed with the W.R.D. transmittal letter. My computer's hard drive directory continues to list the file for the Zimmer Opposition, and it indicates that no changes have been made since July 3, 2001. A review of that file shows that its text is the same as that of the Zimmer Opposition which was resubmitted by Mr. Jazzo on July 11, 2001. Clearly, therefore, the document was prepared and ready to be filed on July 3, 2001, and the only thing which has cast a doubt over its filing is a copying error. The employment of the secretary responsible for the copying has now been terminated.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 1st day of August, 2001.


Anne Goodwin Crump

CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, a secretary with the firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that I have mailed, first class postage prepaid, on this 1st day of August, 2001, a copy of the attached RESPONSE TO MOTION TO STRIKE to the following:

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Allocations Branch
Policy and Rules Division
Mass Media Bureau, Room 3-A266
Federal Communications Commission
Washington, D.C. 205534

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* By Hand Delivery


Suzanne E. Thompson